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Nos. 14-556, 14-562, 14-571, and 14-574

In the Supreme Court of the United States

JAMES OBERGEFELL, ET AL., PETITIONERS
v.
RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL., RESPONDENTS

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* ROBERT OSCAR LOPEZ AND B.N. KLEIN IN SUPPORT OF RESPONDENTS

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(Additional captions listed on inside cover)

VALERIA TANCO, ET AL., PETITIONERS

v.

BILL HASLAM, GOVERNOR OF TENNESSEE, ET AL., RESPONDENTS

APRIL DEBOER, ET AL., PETITIONERS

v.

RICK SNYDER, GOVERNOR OF MICHIGAN, ET AL., RESPONDENTS

GREGORY BOURKE, ET AL., PETITIONERS

v.

STEVE BESHEAR, GOVERNOR OF KENTUCKY, ET AL., RESPONDENTS

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AMICI CURIAE STATEMENT OF INTEREST[1]

Robert Oscar Lopez: I am a tenured professor at California State University-Northridge and a humanities scholar. I now serve as president of the International Children's Rights Institute (incorporated in California 2015). I was raised by a Puerto Rican lesbian mother in a lifelong relationship with her female partner, who acted as a *de facto* co-guardian and remains an important part of my life. My interest in supporting Respondents in these cases stems from my experience working with other children of gay parents—as well as adoptees, children of third-party reproduction procedures, and children of divorce. I documented their experiences in the process of researching for the book Jephthah's Daughters: Innocent Casualties in the War for Family "Equality" (2015).

B.N. Klein: My interest in supporting Respondents in these cases is based on the experience of my childhood with a Jewish lesbian mother and her partners in the gay community in New York State in the 1970's and 80's; also I am basing this on my work as a visiting professor, lecturer, and writer collaborating on various archival projects to record the testimonials of other children raised in unusual family structures. I am an at-large officer serving on the Board of Directors of the International Children's Rights Institute, based in

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[1] No party or its counsel wrote or helped write this brief, or gave money intended to fund its writing or submission, *see* S. Ct. R. 37. Blanket permission from Respondents to write briefs is filed with the Court, as is a letter of permission to *Amici* from Petitioners.

southern California, which deals with adoption, third-party reproduction, and divorce as these issues affect the rights of children. I have also co-authored, as "Rivka Edelman", a book with Robert Oscar Lopez, Jephthah's Daughters: Innocent Casualties in the War for Family "Equality" (2015), on the impact of what we call a modern secular ideology of child sacrifice -- the use of children as sacrificial objects to please adult agendas.

SUMMARY OF ARGUMENT

The legalization of gay marriage may come from a sincere desire to offer equal protections to same-sex couples and their families. Yet in truth the effect of legalizing gay marriage is discriminatory against two groups: (1) children of gays (or "COGs") who will turn into a suspect class as a practical result of legalized gay marriage, and (2) women. For this reason, the Court should treat the legalization of same-sex marriage as the legalization of discrimination. The Court should refer to the Fourteenth Amendment clause about equal protection of the laws, in order to uphold laws that define marriage as only male-female. In upholding such laws the Court would ensure that citizens with gay parents have equal protection both as minors and as adults, and that such citizens will not be estranged from their father or mother without due process. The Court would likewise ensure that women are given equal protection against the loss of kinship ties to their biological children. Robert Oscar Lopez's portion of the brief will address the transformation of COGs into a suspect class as a result of legalizing gay marriage, while B.N. Klein's

portion of the brief will address both COGs and women's status in the wake of legalized gay marriage. As members of ethnic minorities, both *amici* call attention to the discriminatory impacts of dismissing biological heritage in favor of state-assigned parenthood based on adults' intent to parent or adult couples' financial resources.

ARGUMENT

ROBERT OSCAR LOPEZ'S ARGUMENT

I, Robert Oscar Lopez, write this to ask that the Court respect the Sixth Circuit's upholding States' definition of marriage as between one man and one woman. Since the ramifications of the Court's ruling will be national, I will proffer an argument that goes beyond what Judge Sutton's opinion presented as the rationale for upholding Michigan's law. In particular, I ask that the Court apply the equal protection and due process clauses of the Fourteenth Amendment to a specific class of citizens – children of gay parents (COGs), such as myself. We have not been given adequate attention in same-sex-marriage jurisprudence.

Until now courts presumed that whatever gay couples wanted automatically would benefit the children placed in gay couples' homes. No serious discussion has occurred in the courts with a focus on points where children and their gay guardians have divergent or even conflicting interests.

Moreover, the courts have only focused on what matters to such children when they are toddlers or teenagers still living with their guardians; the

impact on individuals raised by gay couples who are grown, independent adults has yet to receive any serious consideration from the courts at all.

Children of gay parents stand to lose significant legal protections if same-sex marriage is legalized. I further ask, respectfully, that the Court recognize that new material is being provided in this case by children of gay parents, never seen before by the Members of the Court; that this material submitted from myself, B.N. Klein, Denise Shick, Dawn Stefanowicz, Katy Faust, and Heather Barwick is more than mere personal or anecdotal reflections but rather a body of scholarly work by educated and largely professionalized COGs with a history of research and community engagement with many other COGs; and that this new material represents substantially different bases of fact, which were not easily available to the Court when *United States v. Windsor*, 133 S. Ct. 2675 (2013), was decided two years ago.

It appears to me that when the Court decided *Windsor*, the Justices had heard testimonials almost completely from COGs whose statements aligned perfectly with the political goals of the same-sex marriage movement. These testimonials were extremely one-sided and lacked critical independence from gay guardians. Even now direct statements from COGs are too often made under the auspices of gay adults who are raising children and consider myriad topics related to gay parenting taboo. In fact, the *amici curiae* brief submitted by Kinsey Morrison, a Stanford student, and Children of Lesbians and Gays Everywhere or COLAGE, in

the instant cases before the Court, was submitted in tandem, *see id.*, with the Family Equality Council, an organization that includes many gay parents. I am not surprised but I am disappointed that the pro-gay-marriage side sees no conflict of interest in merging declarations from children of gay parents and gay parents in the same document as if their interests seamlessly dovetail with each other.

In preparing the current briefs for the court, *amici* took stock of the effects of having COLAGE claim, for over two decades, to be "the only national organization" representing children of gay parents, Br. at 5, yet working uncritically with gay advocacy groups to whom children's interests are not effectively differentiated from gay adult interests. The three joint briefs by COGs being submitted on the side of traditional marriage in this case represent the first time that the Court gets to hear a full-length independent and scholarly view from COGs apart from the overriding interests of gay parents.

The research "consensus" regarding same-sex parenting has suffered from serious flaws, the greatest flaw being the presumptions underlying the methodologies. On what basis can a society define happiness, a "well-adjusted" child, or "faring well"? Nowhere in such metrics does one find the most basic yearning, reported over and over again in testimonials from COGs, for a mother and father, for one's origins, and for one's freedom from false identities imposed by politics.

If the Court recognizes the crucial importance of this new material, I ask that the Court revisit and reconsider the way it decided *Windsor* in order to prevent the creation of a new suspect class of people--Americans raised by gay couples.

I. WHICH SOCIETY IS BEST FOR A CHILD WITH A GAY PARENT?

I am the son of a Puerto Rican lesbian and a Filipino man. Let us consider which society treats my status as such more responsibly:

[a] a society that transfers all custodial powers to my mother and her Caucasian female lover and permanently eradicates all ties to my father when I am a powerless minor, or

[b] a society that presumes custody of me should go to my father and mother, unless there is some exigency beyond anyone's control, regardless of whatever romantic ties they may have to third parties of either gender.

Society [a] is the kind of society that will exist if same-sex marriage is universally legalized.

Society [b] is the kind of society that will exist in those States choosing it, if mandatory same-sex legal marriage is stopped by the Supreme Court.

I have more to fear from [a] and less to fear from [b].

There are many other children of gay couples whom I have interviewed, spoken to, and studied, who feel as I do. Almost five hundred pages of

scholarship into these issues are provided in my book, Jephthah's Daughters, *see id. passim*, in which I look closely at over seventy cases of same-sex parenting, including my own. Among myself and the five other COGs who are submitting amicus briefs to the Court, we know of over one hundred individuals who have experiences and outlooks similar to our own. The vast majority of these people will never come forward because of the climate of fear and intimidation that the debate on gay marriage has fostered. I will provide a tiny fraction of such documentation in this brief. I beseech the Justices to consult the information made available in Jephthah's Daughters if possible. Chapters 1-2, 5-9, 11, 14, and 15 all present brand new material about children raised by same-sex couples. Chapters 40 and 46-50 present extensive documentation regarding the massive and organized campaigns to target and silence COGs who disagree with the mainstream LGBT position on same-sex marriage.[2]

In summary, it is not the prohibition of gay marriage that targets children of gay parents for discrimination. *Au contraire*, gay marriage targets children of gay parents for discrimination. This brief will explain this conundrum.

II. CONFLICTING FOURTEENTH-AMENDMENT INVOCATIONS

Gay-marriage supporters have misread, if unintentionally, the Fourteenth Amendment. Pro-gay-marriage attorneys have cited the Fourteenth Amendment to state that COGs will become a

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[2] Jephthah's Daughters (Lopez & Edelman, eds.) (2015).

suspect class and live in a state of unequal protection unless the couples raising them are given the state's imprimatur through an officially sanctioned marriage.[3] The logic behind this assertion is totally backward.

In truth it is gay marriage that will create a suspect class of children targeted for the denial of essential civil and human rights. Gay marriage will allow adults to acquire custody of other people's children and deny those children connections to their original mother and father. Other problems flow from this initial denial of the basic human right to be connected to one's origins.

What the Court must weigh now is the competing application of the Fourteenth Amendment to two distinct classes:

[a] gay and lesbian couples who want children, and on the other hand,

[b] COGs.

There is no way to provide equal protection to both these groups simultaneously. Gay-marriage advocates have focused on equality for [a] to the exclusion of equality for [b]. Gay-marriage advocates have called not only for gay marriage as a right, but "family equality," as evidenced in the name of the

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[3] *Cf., e.g.*, the tenor of remarks by lawyer Roberta Kaplan *in* Cheryl Wetzstein, *Gay marriage arguments heard in 5th Circuit*, Washington Times, Jan. 9, 2015, http://www.washingtontimes.com/news/2015/jan/9/gay-marriage-arguments-heard-in-5th-circuit/ (last visited Mar. 22 or 23, 2015, as with all Internet links herein).

Family Equality Council and the plentiful other organizations (*see, e.g.*, the "Equality Matters" blog operated by Media Matters[4]), which use "marriage equality" as a code-word rather than the simpler term "gay-marriage rights."

The use of the word "equality" has come to mean that gay couples must have everything that accrues to a man and woman in a committed sexual relationship, including obedient and loving children. The instant cases, unlike *Windsor*, hinge predominantly on the claim that same-sex couples' marriage equality will entail equal powers over dependent minors since adoption is at the center of the argument. According to pro-gay-marriage advocates, for gay couples to have marriage equality they must have physical, financial, and even emotional power over individuals who eventually come to comprise a distinct class of people – COGs like me.

Most children are born into the world and grow up without being bound by law to satisfy an adult class's need for reparations or remediation for past discrimination. By contrast, COGs grow up with a price on their head. They are "owned" by a gay couple and by extension by the gay community. If they are not naïve, they know that the gay community will feel like it "owns" them even when they are no longer children. In Jephthah's Daughters, chapters 32-34, I draw on Latino, Native American, and African-American history to demonstrate the longstanding evidence we have of

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[4] http://equalitymatters.org.

the effects on classes of people when they grow up feeling that another class of people owns them. Not only did I experience many of the same traumas as a result of feeling "owned" by the gay community; the theme is persistent in Chapters 2 and 9 of the book, in which I deal with COGs very specifically.

The demand for "equality" goes further and ventures into the realm of speech and association, not only for society at large but of course also for COGs who live in gay homes. To provide full marriage "equality," their custody arrangements must be affirmed as indistinguishable from all others. No judgment can be made about the relative conditions of gay homes, regardless of whether people's moral judgment might stem from concern for the unequal treatment of children in gay couples' homes relative to children in other homes. If, for example, a COG notices that he has a biological mother, a stepmother, and no father, and he vocalizes a sense of discomfort or jealousy upon seeing that peers have simply a mother and a father, the COG is engaging in "anti-equality" or "anti-gay" speech. Chapters 40 and 48 of Jephthah's Daughters provide extensive documentation of instances where COGs have been publicly branded with such labels for honestly describing their experience.

In Jephthah's Daughters I provide documentation of other COGs' experience with repression. The history of the gay community lashing out at people who have been raised by gay parents is long, ugly, and shocking. This brief affords me limited space, so here I would like to present a few examples to the Court based on my firsthand experience. Zack Ford,

a journalist with ThinkProgress, has called me "anti-equality."[5] Jeremy Hooper, who worked long-term with the Gay and Lesbian Alliance against Defamation (GLAAD), called me "anti-gay." Ty Cobb, an employee of the pro-gay Human Rights Campaign, sent an email to all of his concern's members (more than a million people) naming me as someone with un-American values, an "exporter of hate."[6]

Ford and Hooper stated these things on their respective editorial sites: namely ThinkProgress and Good as You. Other sites including Frontiers LA, Right Wing Watch, Raw Story, Towleroad, Equality Matters, Huffington Post, JoeMyGod, and Human Rights Campaign have reinforced this labeling of me.[7] These labels have been attached so ubiquitously to my name that any search on Google of "Robert Oscar Lopez" will take an Internet surfer to stories of my "anti-equality" and "anti-gay" crimes against the gay community.[8]

As a result of this online association between my name and anti-gay bigotry, I have lost speaking

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[5] Zack Ford, *Anti-Equality Figurehead: Same-Sex Parenting Is A 'Crime Against Humanity'*, July 17, 2013, 1:47 p.m., http://thinkprogress.org/lgbt/2013/07/17/2316561/anti-equality-figurehead-same-sex-parenting-is-a-crime-against-humanity/.

[6] For further details see Robert O. Lopez, *A Tale of Targeting*, First Things, Oct. 21, 2014, http://www.firstthings.com/web-exclusives/2014/10/a-tale-of-targeting, and Robert Oscar Lopez, *What It's Like to Face the LGBT Inquisition*, The Federalist, Oct. 27, 2014, http://thefederalist.com/2014/10/27/what-its-like-to-face-the-lgbt-inquisition/.

[7] *See* Jephthah's Daughters, *supra*, ch. 40.

[8] *See id.*

engagements, been physically mobbed at venues such as Catholic University of America, and faced harassment at my job, at social events, and at professional conferences including ones that have nothing to do with any gay issues.[9] Both in Jephthah's Daughters and in dozens of articles in venues such as First Things, Federalist, Public Discourse, and American Thinker, I have detailed the demonstrable ways that such targeting inflicted professional and financial harm on me at my job at California State University. I have been subject to vastly different standards and scrutiny relative to colleagues who are not COGs.

On what basis have I been deemed anti-gay and been subject to discrimination, retaliation, and harassment? I am the son of a lesbian and exercised my free speech in describing, honestly, the loss and pain I felt having three guardians rather than two, a mother and a *de facto* stepmother figure and an absent father. As I explained in my brief to the Sixth Circuit,[10] and in Jephthah's Daughters, I was academically successful and would have been the perfect poster boy for same-sex parenting around age fifteen. I went to Yale, served my country in the Army, and am now a tenured professor in a happy marriage to the mother of my two children. But behind these façades of success lay many problems,

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[9] *See* Robert Oscar Lopez, *When I say 'Je suis Charlie,' it's not kitsch*, American Thinker, Jan. 11, 2015, http://www.americanthinker.com/articles/2015/01/when_i_say_je_suis_charlie_its_not_kitsch.html.

[10] Br. of Amicus Curiae Robert Oscar Lopez Supporting Defs.-Appellants and Supporting Reversal (May 14, 2014), in *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014).

including a history of accepting money for sex from male strangers and other high-risk, self-destructive behavior in public parks, university libraries, and supermarket restrooms. I turned out "okay" but I very easily could have veered into ruin. All along this self-harm was driven by a feeling of incompleteness and an unacknowledged longing for my father, who simply could not be replaced by my mother's lover. When I re-established a relationship with my father at the age of twenty-seven, my whole life changed—for the better.

Is it possible for me to speak publicly about my life and the similar lives of other COGs without being labeled anti-gay and facing catastrophic backlash? Right now, the answer is no. Consider that I support civil unions for gays, support eligibility for foster care for same-sex couples, and do not view homosexuality as a sin. Why am I smeared so widely as anti-gay? The reason is simple: As a COG I am separated from others and subjected to entirely different standards, both legally and unofficially; moreover, as a COG I am not given the protection against harassment, discrimination, and retaliation that members of targeted groups are supposed to receive according to law.

Any adoptee, orphan, or child of divorce, without a gay parent, has the freedom of speech in a democratic society to discuss openly what was beneficial or painful about their home life. A COG does not have those liberties and is treated with indignity and harassment for exercising free speech.

The process by which this deplorable situation arose was not, as gay marriage advocates have attempted to claim, society's homophobia against our parents for being gay. The process came about due to specific gay organizations such as GLAAD defining COGs as people who must say and do very specific things, and must never say and do other very specific things, in order to give gay couples full marriage "equality."[11] All the targeting and segregation and discrimination against COGs came from gay-marriage supporters and occurred in the name of gay marriage.

III. CHILDREN WITH GAY PARENTS NOW HAVE FEWER FREEDOMS THAN THEY DID BEFORE THE RISE OF GAY MARRIAGE

In my research, I have studied COGs born prior to 1985 and COGs born after 1985. They face similar domestic pains, such as a sense of loss because of a missing biological parent and the imposition of a stepparent who feels, to varying degrees, "forced" upon the COG. I wish I could publish all of what they have said but they are ubiquitously afraid of how honest discussion of their lives could backfire. Therefore I included a small fraction of these testimonials in Section One of Jephthah's Daughters, and will summarize the general trends below.

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[11] For a sampling of this, see Robert Oscar Lopez, *Life on GLAAD's Blacklist*, American Thinker, Dec, 27, 2013, http://www.americanthinker.com/articles/2013/12/life_on_glaads_blacklist.html.

While experiences vary, the COGs born before 1985 are less likely to recount memories of being hectored, coerced, or excessively coached into gay rhetoric during their childhood (they have stories of being socially pressured to regurgitate gay rhetoric, but these things usually happened to them when they became adults). Those born before 1985 were also less likely to be forced to show filial obedience to the unrelated gay stepparent figure. Those born before 1985 were more likely to know who their opposite-sex parent was and have a relationship to that person.

Those born after 1985 often recount, as part of their childhood memories, fear of angering or disappointing the gay community and by extension the people raising them. Those born after 1985 more commonly refer to having been subjected to the authority of the unrelated gay stepparent and not liking this imposition. Those born after 1985 are less likely to know the opposite-sex parent or, if they did know that person, to have a relationship with him or her. In other words, the later the COG was born, the more oppressively the COG was forced into the limiting strictures associated with the gay-marriage movement's ideology.

The effect on younger COGs is noticeable. It is for this reason, I suspect, that the social-science research by Doug Allen[12] and Paul Sullins[13] found

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[12] Douglas W. Allen, *High school graduation rates among children of same-sex households*, 11 *Review of Economics of the Households* 635 (Dec. 2013).

disparate impacts on children of same-sex couples in the studies they published in 2013 and 2015, respectively. The dissonance between their findings and earlier, less troubling sociological findings may have resulted from different impacts on a younger generation that attained critical mass when Allen and Sullins did their research—and also, after gay marriage became a prominent political factor in everyday life.

It has gotten harder, not easier, for COGs, to the extent that gay marriage has become a broader and more accepted phenomenon. The younger generation of COGs has lived with an enormous amount of surveillance and speech policing by people interested in ensuring that they say nothing to undermine the social prestige of their gay guardians. The younger generation of COGs seems to feel more uprooted from the missing half of their ancestry and more fearful of defying the authority of gay stepparent figures whom they still tend to view as stepparents even if they are fond of them.

COGs are now treated with less dignity, more suspicion, fewer protections and heightened discrimination/harassment/retaliation than they saw before same-sex marriage achieved a level of national success. All of this is emanating from within the gay community, enabled by complacent groups such as COLAGE and emboldened by the gay-marriage equality movement. Put simply, the

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[13] D. Paul Sullins, *Emotional Problems among Children with Same-Sex Parents: Difference by Definition*, 7 Brit. J. of Educ., Soc'y & Behav. Sci. 99, Feb. 18, 2015.

situation for COGs has worsened as their numbers have multiplied.

IV. COMPARED TO THE GENERAL POPULATION, CHILDREN WITH GAY PARENTS HAVE FEWER FREEDOMS, COURTESIES, AND PROTECTIONS

The inequity described above is not the reflection of overall decline in children's rights in the United States. COGs have noticeably fewer benefits, dignities, courtesies, and legal protections than do their peers without gay parents.

COGs are not easily allowed to speak honestly about their families or themselves while they are children or while they are adults. They cannot easily associate with churches or political groups that conflict with their gay parents' political agenda. All six COGs who are submitting amicus briefs to the Court opposing same-sex marriage (ranging in age from 31 to 55) are now adults well into their careers. They have dealt with gay activists contacting their employers or professional associates in order to retaliate against them for negative feedback regarding gay parenting.[14] As far as I know, popular pro-gay-marriage groups, including COLAGE, have not come forward to defend any of us from these public humiliations.

Fellow *amici* have also experienced gay activists contacting friends or relatives to apply pressure on them and alienate them from social support as punishment for discussing their hardships in gay

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[14] *See* Section Six, Jephthah's Daughters.

homes. All, as well, have dealt with concerted efforts by groups such as the New Civil Rights Movement, the Human Rights Campaign, and GLAAD to load the Internet with negative press about them, so that their names become permanently associated with labels such as anti-gay, bigots, homophobe, or sometimes more pedestrian brands like "ungrateful," "crazy," or "bitter." There is not room for a full catalogue of the indignities we have suffered at the hands of these non-profit advocacy organizations, but if we had time to provide a full accounting, the Justices of this Court would be justifiably horrified. That no investigation has been made into allegations of organized intimidation of COGs by prestigious non-profits such as the Human Rights Campaign and GLAAD represents an inexcusable lapse in American society's judgment.[15]

GLAAD put up a "Commentator Accountability Project" ("CAP") page about me,[16] which consisted of obscure and out-of-context quotes taken from blog posts, most of which were deleted—the page downplays facts such as my support for gay civil unions, gay foster care, and free literary expression for gay writers. Like many of these gay advocacy organizations, GLAAD members consciously emphasize obscure statements made by me and ignore the bulk of what I say in order to focus on

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[15] *See id.*

[16] CAP, *Robert Oscar López (aka Bobby Lopez)*, GLAAD (undated), http:// www.glaad.org/cap/robert-oscar-l%C3%B3pez-aka-bobby-lopez.

obscure, off-hand remarks, many of which were made in jest or figurative.[17]

In my case, I was a public employee of the State of California and found state offices unwilling to respond to vandalism, physical intimidation, slander, harassment, discrimination, and retaliation at my job. At a meeting with one of my supervisors in December 2014, a boss told me, "The work you do makes people very angry and they want to come heckle you. I can't stop them."

COGs, particularly in the younger generation, have told me stories about therapists or counselors chastising them for feeling sad about not having one parent. One COG, a boy conceived in the 1990s by a surrogate contract with a gay father, was taken to a lesbian psychiatrist who told him that his aching sadness on Mother's Day was the result of homophobia. He was told to apologize to his gay father for having confided in the lesbian psychiatrist about his anger over not having a mother.[18]

Another teenage girl who was a sperm-donor-conceived child of a lesbian couple laments that she gets a "lecture" when she longs for a "normal" family.[19] These lectures toward COGs come not only from parents but from family friends, relatives, teachers, peers, and all the cultural authorities on

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[17] Robert Oscar Lopez, *Here's What You Should Know To Take On Big Gay*, The Federalist, Jan. 7, 2015, http://thefederalist.com/2015/01/07/heres-what-you-should-know-to-take-on-big-gay/.

[18] Jephthah's Daughters, ch. 9.

[19] Jephthah's Daughters 81.

television—if we state that our childhood experience was strange, bizarre, or abnormal, we are doing something wrong and told that if we continue making such statements, we will pay terrible consequences.

Whereas their peers without gay parents are generally trusted when they express unhappiness about something going on in their home, COGs are warned that they are guilty of homophobia if they are unhappy with their home life or, alternatively, told always to direct blame at external homophobia and exonerate their parents' decisions.[20] In Chapter 9 of Jephthah's Daughters I provide plentiful examples of foster-care authorities ignoring warning signs and not intervening in abusive same-sex couples' homes until too late, leaving children in the homes to suffer in silence. Often the cause seems to be political correctness and fear of angering the gay community.

V. CHILDREN OF GAY COUPLES ARE DENIED THEIR HERITAGE AND FORCED TO LIVE IN SEGREGATED DOMESTIC SPACES

Children without gay parents are usually treated with respect when they insist on having knowledge of where they came from, even if one father or mother was missing after an adoption, a divorce, or a remarriage. Adoptees who return to the country from which they were adopted are generally

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[20] *Cf.* Mary Elizabeth Williams, *A grown-up "Heather Has Two Mommies" now denounces gay marriage*, Salon, Mar. 19, 2015, 11:12 a.m., http://www.salon.com/2015/03/19/a_daughter_of_gay_moms_speaks_out_for_traditional_family/.

supported in their journeys back into their own ancestry, for instance.

COGs are often met with varying levels of resistance when they wish to build loving connections to the missing opposite-sex parent. Children in gay male homes are blocked from relating to their mothers; children in lesbian homes are blocked from relating to their fathers. One main effect of legalizing gay marriage is to make it easier for gay males to monopolize children's affections and sideline their mothers; gay marriage allows lesbians the same prerogative with regards to the fathers of the children they raise.

The homes in which COGs live represent segregated living spaces because one sex is explicitly excluded; the two adults define their very identity according to their unwillingness to be intimate or share space with the opposite sex. Living for long stretches of their lives in segregated domestic spaces, COGs experience much of the same loss and alienation that occurred in other settings—such as schools, stores, neighborhoods, or churches—that were racially segregated.[21]

Narratives from COGs mirror some findings by researchers such as Doug Allen, indicating that females are affected more negatively than males in same-sex couples' homes, though both boys and girls do have hardships. Female COGs who grow up in

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[21] Robert Oscar Lopez, *Suppressing the Black Diaspora at Stanford*, American Thinker, Mar. 24, 2014, http://www.americanthinker.com/articles/2014/03/suppressing_the_black_diaspora_at_stanford.html.

lesbian homes often recount feelings of curiosity and almost obsession with males, which can cause them to seek attention from males through sex. Female COGs who grow up in gay male homes often recall feeling like they were seen as dirty or less valuable as they developed from girls into women, because they were in a home that excluded adult women during their childhood.

In cases where the eliminated opposite-sex parent is of a different race, religion, or ethnic origin (such as in my case), there develops a pattern of systematized internalized prejudice, because the child is threatened with punishment for wanting to have a connection with a race, religion, or ethnic origin that the COG may feel tied to, by blood.[22] The barriers erected to keep COGs away from the missing parent are more severe and painful than those set up to keep other children away from estranged parents due to:

[a] the extreme sensitivity surrounding gay parenting as an issue, and,

[b] the highly organized and well-funded gay lobby which, as this brief illustrates, tracks and intimidates COGs who are perceived by the gay activist community as betraying their gay parents.[23]

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[22] Much of this issue is addressed in Chapter 15 of Jephthah's Daughters, on birth certificates. Also, that book's Chapter 33 on Native American child welfare legislation and Chapter 34 on African-American history.

[23] Rivka Edelman, *This Lesbian's Daughter Has Had Enough*, American Thinker, Oct. 20, 2014, http://www.americanthinker.

VI. THE CONSEQUENCES OF THE SUPREME COURT'S RULING

If the Court upholds the right of each State's people to define marriage as male-female, then the marital institution will reflect the reality that all children come into existence due to a male and female gamete—that is to say, a mother and father. Upholding the male-female definition of marriage means that in the eyes of the law, every citizen has a mother and father with presumed obligations to that citizen—a self-evident fact that no Court decision can alter. Every citizen can rest assured that society will respect and dignify the two fundamental and universal relationships that frame human existence: a person's relationship with her father, and a person's relationship with her mother. These two relationships bring with them not only the material impact of financial support, basic childcare, and domestic education, but also the more abstract but equally important impacts of heritage, knowledge of one's origins, sentimental balance, connections to cultural history, and profound appreciation for the two gendered halves of humanity.

Given the values attached to a mother and father –and in particular, one's biological mother and father—the creation of a same-sex home with children is already an imposition of unequal and disadvantageous conditions upon a child. By defining marriage as only male-female, society discourages and even prevents the creation of such unequal

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com/articles/2014/10/this_lesbians_daughter_has_had_enough.html.

conditions. Laws barring gay marriage are not discriminatory; they are actually anti-discrimination laws keeping the number of children who have to live their whole lives deprived of their mother or father to an absolute minimum.

By legalizing same-sex marriage, the Court would be targeting a specific community—the assemblage of people who identify as gay or lesbian—and empowering that community to use the force of the state to choose a subset of children to deprive of the aforementioned dignities, benefits, protections, and entitlements. Children placed into same-sex couples' homes would become a *de jure* subset of citizens coercively stripped of human dignities and protections to which they are entitled by the state. They would be consciously separated from the rest of society, forced to live their entire lives under unequal conditions, and denied both equal protection and due process.

B.N. KLEIN'S ARGUMENT

In this brief I will present new information for the Court regarding the impact of same-sex marriage legalization on women and children. Section 1 of the Fourteenth Amendment of the United States Constitution mandates that all citizens must receive "equal protection" under the law and "due process" before being deprived of liberty or property, *id.* Legalizing same-sex marriage will create a suspect class of children denied unlawfully their inalienable right to their mother and father, and the inheritances associated with their origins. The effects on children will also extend to disparate

negative impacts on women as a class, since women's losses will be greater than men's losses in the broken bonds that result from legalizing gay marriage.

I. THE ARGUMENT THAT MARRIAGE ALONE CONFERS DIGNITY ON PARENTS IS WRONG

Marriage in America in 2015 is not a measure or a reflection of how much society at large values a person or a group. If it were a measure then all the millions of people who cohabitate or are in other living arrangements (for instance, single parents) would be considered second-class, and they are not. The state is not the guardian of people's emotional lives.

The making of the same-sex family is unfair to children who are denied their basic human right to a mother or a father. I further contend that the commercialization of "baby-making" needed to create the same-sex family is reproductive prostitution, for-profit commodification of humans, and a form of indentured servitude forcing unequal conditions on women as a class. Same-sex marriage is normalizing human-rights violations against women and children.

The mechanisms by which same-sex couples get children are obscured from public scrutiny because they involve other people and the erosion of their rights, the exploitation of their bodies, or their offspring.[24] The popular justification that there are

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[24] All of Section Two of Jephthah's Daughters provides documentation of the specific harms to women of these reproduction technologies.

many single mothers, as if the existence of single-parent homes can be grounds to create more motherless and fatherless homes, is misogynistic.[25] Such an argument neglects the possibility that many of these children have some relationship to their father. On the other hand same-sex parenting always denies the child either a mother or a father.

II. MY STORY AND MAIN ARGUMENT

I will summarize my personal experience briefly before stating my general argument. I am a classic liberal, voted for Obama twice, and am still opposed to so-called marriage equality. My mother was an "out" lesbian. I grew up with her and her partners. I am not Christian and I have never had any association with any groups that seek to preserve "traditional marriage" or "natural marriage."

My mother had three lesbian lovers. When I was very young one lived in the family home along with my father. She spent over 25 years with her final partner. Each of these women asserted adult power over me as if they were a parent. I realized by age five that they were not a parent. I grew up in an atmosphere where adult sexuality was a measure of people's worthiness. There was a lot of contempt for other people and especially heterosexuals.

By the time I was eleven I also found that the lesbian community had an unhealthy preoccupation

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[25] Rivka Edeman, *LGBT Demands For Other People's Children Are Misogynistic*, The Federalist, Feb. 3, 2015, http://thefederalist.com/2015/02/03/lbgt-demands-for-other-peoples-children-are-misogynistic/.

with their children's sexuality. Sally Kohn, lesbian journalist, admits this in her article *I'm gay. And I want my kid to be gay too.*[26]

Children around me often became props, displayed publically to prove that gay families were just like heterosexual ones. I have known incidents in which adults coached children to give rehearsed false testimony to law enforcement later to be used in court.

I had to pay constant homage and attention to the adults' identity. The importance of their identity required some study. I had to read *Patience and Sarah,*[27] and I had to view *The Killing of Sister George.*[28] Other children were reading *Little House on The Prairie*[29] and seeing *Oliver!*[30] At the same time there was a constant dichotomy at play—simplistic and hostile, black and white. Their sex and identity meant everything. To them heterosexuals meant nothing—breeding, low-level amoebas splitting in their conservative bedroom communities. Our house was overrun with newly minted lesbians planning their divorces and alimony strategies. In one case this meant renting U-Hauls to clean out the house when their husbands were at work.

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[26] Wash. Post, Feb. 20, 2015, http://www.washingtonpost.com/opinions/im-gay-i-want-my-kid-to-be-gay-too/2015/02/19/eba697c2-b847-11e4-aa05-1ce812b3fdd2_story.html.

[27] Alma Routsong, writing as Isabel Miller, *Patience and Sarah,* Vancouver: Arsenal Pulp Press, 1972 (1969).

[28] Directed/produced by Robert Aldrich (Palomar Pictures 1968); based on the 1964 play by Frank Marcus.

[29] Laura Ingalls Wilder, *Little House on the Prairie* (1935).

[30] Directed by Carol Reed, *Oliver! (*Romulus Films 1968).

My guardians had no use for any religious person: most Jews (which I was) and every Christian. The intolerance expanded. They condescended to people who had office jobs for corporations, and women who were on the PTA.

All the distortion created in me a duality, teetering between hopelessness and arrogance. Not unlike today's climate, in my home and childhood to disagree was to risk punishing rejection and public shaming. They did this with the encouragement of all their friends. What you did was broadcast to other abusive adults. While my mother was preoccupied with my sexuality she was only preoccupied if it matched her values in a similar way to Ms. Kohn. So in some ways I was not allowed to have sexuality because that might mean an identity independent from them, which certainly was not permitted.

In this setting children have to squelch wishing for a mother or father. They are mocked and shamed if they ever express such a sentiment. They might be considered as traitors and sentenced to isolation, rejection and silence. Children learned to role-play the part of living dolls. Most insidious, the manipulations extend across the family and include pitting one child against the other, encouraging children to turn on each other as a control method. This has devastating consequences far into adulthood.

Today we denounce segregation and discrimination in hiring in large part because we believe that human beings flourish when exposed to

differences, among which sexual difference has taken an important place. Children in same-sex homes, whether gay or straight, suffer from the domestic equivalent of segregation and from seeing their guardians practice the domestic equivalent of discrimination.

Many adults are capable of child-care and many love children. But adult love does not make a family. The best analogy is this: let's say I was madly in love with a wonderful brilliant gay man. Should he be forced to marry me because I love him—is that fair? That is close to what is being demanded of children. Judge Jeffrey Sutton's quote:

> And gay couples, no less than straight couples, are capable of raising children and providing stable families for them. The quality of such relationships, and the capacity to raise children within them, turns not on sexual orientation but on individual choices and individual commitment.

DeBoer, *supra* n.10, 772 F.3d at 405.

How does he know this? Fewer than thirteen years have elapsed since legal same-sex marriage came to Massachusetts. He has no idea what children long for and in my experience he is wrong.

The only images of LGBT families most people will ever see are crafted and controlled. Often small children under the power of their parents are given more credence than adult COGs who have distance and independence. The often-exploitative means to

create such families are hidden. In addition, the effects on the children over the long course of their lives have not been honestly researched. All these overly sweet testimonials from COLAGE, PFLAG, and Family Equality Council may in fact be red flags. Children have to support and protect the parents; they have to champion the cause.

III. THE TRUTH ABOUT ADOPTION AND NEEDY CHILDREN

Many people mistakenly imagine that there are millions of children in need of adoption. There were roughly 101,000 children available for adoption in 2013. Twelve to fifteen percent of heterosexual couples struggle with fertility and this represents a potential pool of millions of adoptive couples.[31] There are long waiting lists. In standard adoption often couples must prove they have gone through extensive fertility treatments. The competition for babies is intense. Gay activist Jeremy Hooper boasted:[32]

> I am an adoptive parent. I can't/won't fully get into my and my husband's adoption story because of privacy rights and respect for other parties, but I can say that "trauma" was not in play. Andrew and I were selected

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[31] *See* statistics presented in Chapter 2 of Jephthah's Daughters.

[32] Jeremy Hooper, *Katy Faust wishes her parents wouldn't have divorced. So gay people can't marry, parent*, Good as You, Feb. 2, 2015, http://www.goodasyou.org/good_as_you/2015/02/katy-faust-wishes-her-parents-wouldnt-have-divorced-so-gay-people-cant-marry-parent.html.

> over thirty other couples, all heterosexual, because of our demonstrated abilities. Words like "fate" and "blessing" were thrown our way, and often.

Id.

We can assume that some of those couples, 60 people in all, underwent years of invasive, painful medical treatments for infertility. Heterosexual couples enter marriage with a reasonable expectation of reproduction. Gay men are not infertile women. Let us not forget the struggles of the gay community in order to remove homosexuality from the list of medical disorders in the 1970s;[33] it would be counterproductive now to go back on this de-stigmatization and promote gay marriage by likening same-sex couples to heterosexual couples who have medical conditions leading to infertility.

We should wonder what exactly Jeremy Hooper and his husband "demonstrated". On what rational basis does society owe children or eggs or wombs to an entire group? What other group in all of human history has demanded society provide other people's children, eggs, or wombs? There are too few children available for adoption for anyone to claim they are altruistically providing homes for the homeless.

IV. THE DISPARATE IMPACT ON WOMEN OF GAY POLICIES RELATING TO CHILDREN

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[33] John P. DeCecco, *Homosexuality in Brief Recovery: From Sickness to Health and Back Again*, 23 J. of Sex Research 106 (Feb. 1987).

While I do not believe all gays would be *de facto* bad parents, I know that much of the gay community has never in my life time put children first as anything other than a piece of property, a past mistake, or a political tool. Observe the children taken by adults to gay pride parades where toddlers and pre-teens are exposed to disturbing, hyper-sexualized displays.[34] Children should not have to take up adults' identity as a political cause in the public square.

A child is neither a constitutional right nor the natural consequence of same-sex sexual relations, and a marriage license does not change biological reality. People knew this going in. The impact of forcing children to attribute their filial affections to non-parents is damaging to all involved, but women as a class bear the hardest burden. When gay men want children on demand, such a system requires women to either hyper-ovulate and sell their own genetic material or to carry children and then dissolve the natural bond between them and their offspring.[35] Surrogate mothers' other children must witness their mother being used as an incubator and their sibling being sent away and sold. When lesbians want children on demand, there is a loss imposed on the child and on the excluded father but a sperm donor's loss is still not as steep and dangerous as the loss experienced by an egg donor or surrogate mother. To the extent that marriage is

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[34] Examples of such: Associated Press, *Proud to be here: Gay pride parades step off across the US*, Daily Mail, June 30, 2014, updated 4:08 p.m., http://www.dailymail.co.uk/news/article-2674199/Proud-Gay-pride-parades-step-US.html.

[35] *See* Section Two of Jephthah's Daughters.

now interwoven with gay parenting, the system edified by gay marriage imposes unequal burdens on women and denies women equal protection under the law.

Since I grew up in a lesbian household, I do not conflate lesbians and gay men as the same or having a shared interest. I note that almost every abusive activist who has been attacking the adult COGs is a gay male, and almost entirely white. When I was young, men dominated the community both culturally and economically. The disparate toll of third-party reproduction continues this trend. Women can be seriously harmed or traumatized by selling children they bear, while nobody ever was damaged or died from expelling semen into a cup.

V. THREATS AND HARRASSMENT FROM LGBT ACTIVISTS

I, along with other adult children, have been subjected to a campaign of bullying, threats, invasions of privacy, and defamation by "gay activists." The events of autumn 2014 provide a harrowing demonstration. I published an article on Public Discourse,[36] a feminist critique of the misogyny often present in LGBT activism. Then, when I filed an amicus brief in *DeLeon v. Perry*,[37] activist Scott Rose wrote to over thirty people at

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[36] Rivka Edelman, *Ruthless Misogyny: Janna Darnelle's Story and Extreme LGBT Activism*, Public Discourse, Oct. 2, 2014, http://www.thepublicdiscourse.com/2014/10/13867.

[37] Br. of Amicus Curiae B.N. Klein Supporting Defs.-Appellants and Supporting Reversal (Aug. 4, 2014, revised Sept. 21, 2014), in *DeLeon v. Perry*, No. 14-50196 (5th Cir.), oral arg. Jan. 9, 2015 (975 F. Supp. 2d 632 (W.D. Tex. 2014)).

Wittenberg University to have me fired.[38] I lost my contract there.

Rose stated I was "conducting outrageous anti-LGBT hate campaigns." He closed with: "why do you have this scumbag teaching?" He followed, with repeated correspondence, threats, and a note to my former husband fishing for a betrayal.

Rose then wrote to Akin Gump, the attorneys in *DeLeon v. Perry* in Texas. He stated, "I am writing to alert you to misrepresentations contained in the amicus brief filed in this case." His claims are provably false. Some of these men, such as Jeremy Hooper, have been employed by major national LGBT organizations. In one thread my child's information was posted, then they slyly included the name of the family she babysat. Scott Rose sent my mother's partner's obituary to me, and then to the administration and all the other faculty in the department at the university. Someone created a YouTube video about me and solicited people to denounce me on Craigslist.

VI. THE DISTORTION OF CIVIL RIGHTS HISTORY LEAVES SEXISM AND CLASS EXPLOITATION UNEXAMINED

Adults' same-sex attraction does not magically or by judicial decision cause a child to stop longing for and needing a mother and a father. That is not discrimination against adults. We as a society have no authority to legislate such a right away. LGBT

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[38] Details of this are provided in Chapter 48 of Jephthah's Daughters.

leaders have argued rightly against the religious vitriol of some intolerant Christian or other groups. By the same token, isn't this movement inflicting another set of beliefs on children by saying, "Okay. we all agree now you don't need a mom and a dad"?

Because the redefinition of marriage is bound to expand same-sex parenting and make it increasingly difficult for children of gay parents to contest their situation, I ask the Court to do the sound and prudent thing. No same-sex couple can reproduce without third parties. The existence of single mothers or divorce is not a justification for children to become part of the supply chain.

Let's consider what is involved in the "Brave New World"[39]–style breeding-for-profit market. Superovulation drugs used on women with normal ovulation has been linked to deaths and cancer. Because the "industry" is unregulated there has been no comprehensive long-term testing or studies. Add to this the effects of multiple pregnancies, eugenics, selective reductions of fetuses, and unneeded C-sections.[40]

Industrialized procreation is harmful to women. This is a multi-million-dollar industry gearing up to create a sub-caste of breeder women. Consider this ad:

> We offer the highest quality surrogate mothers . . . .

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[39] After the 1932 Aldous Huxley novel.

[40] Jennifer Lahl's Introduction to Section Two in Jephthah's Daughters is useful here.

. . . .

> The Surrogacy SOURCE is proud to offer our services to the gay community, and we have had great success assisting gay males, gay male couples, single females, and lesbian couples on their rewarding and complex journey to parenthood. When considering a surrogate pregnancy, come to The Surrogacy SOURCE with the confidence that we can help you become a parent, regardless of your unique situation.[41]

And this one: "Our diverse clientele includes not only members of the LGBT community but HIV+ men as well."[42]

Scholars, the medical community in the Third World, and feminists worldwide recognize the threat. Lesbian feminist Julie Bindel notes:

> We also need to pose a challenge to the increasing numbers of gay men who think it perfectly acceptable to use the womb of a desperate woman in order to reproduce. Indeed, this method of making babies is fast becoming the number-one option for gay men, which

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[41] Fertility SOURCE Companies, *Gay & LGBT Surrogacy: Gay Parenting at the Surrogacy SOURCE* (undated but copyrighted through 2015), http://www.thesurrogacysource.com/lgbt_surrogacy.htm?type=Intended%20Parent.

[42] Circle Surrogacy, *Sustainable Success* (undated), http://www.circlesurrogacy.com.

> means the practice will become more normalized, and be seen even as a "right" for those who cannot conceive in the traditional manner.[43]

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Can step-parenting work? Sure, sometimes. Everything works sometimes. But that does not mean it is in the best interest of the child. It serves the adults' interest first. The child did not choose the partner and has no say. This is true of heterosexuals and gays. Yet there is a difference: all children in a same-sex family have a stepparent and only a percentage of the others do. It is unfair to bring a child into the world as property.

To create a legal or emotional situation that has the expectation and "right" of children without the possibility for reproduction is not rational and will deny both women and the children they bear even more fundamental unquestioned rights. The words in the PFLAG amicus brief[44] in the instant cases echo the damaging ideas and emotions that saddened our lives:

> Our commitment cannot be diminished by a law or a court ruling. . . . Without full legal recognition under State laws, our union will still be deemed second-class, and somehow

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[43] Julie Bindel, *Commercial surrogacy is a rigged market in wombs for rent*, The Guardian (London), Feb. 20, 2015, 2:31 p.m., http://www.theguardian.com/commentisfree/2015/feb/20/commercial-surrogacy-wombs-rent-same-sex-pregnancy.

[44] Br. of PFLAG, Inc. as *Amicus Curiae* in Supp. of Pet'rs.

> "less than" the union between two people of the opposite sex. We plan to have children together, and we want our kids to know that our relationship is a marriage, equal in dignity to relationships between opposite-sex couples. We have the right to know that our State values us as individuals and recognizes as a family.

Id. at 24-25. In this schema, children are demands from society, possessions, and entitlements tied to state-recognized marriage. Consider the phrase, "we plan to have children." Whose children do they plan to have? The Court must consider that granting marriage "rights" to same-sex couples will mean, effectively, granting them other people's children, and turning those children into a suspect class denied the rights to their mother and father.

In the future all those harmed by this social experiment will have the right to demand reparations and damages for what was done to them: the egg donors, the surrogates, the children. A fund should be set up now.

The lack of unbiased research and the fact that adult children have been systematically threatened, bullied, shamed and silenced have created more risks for children, not less. We know that children at risk in the gay community lack the ability to safely come forward or be protected and believed. In the current climate, people are too afraid of being called homophobic and a bigot. The child will not be protected. So we are not saying there is necessarily

more abuse in homes with gay parents, but we are saying that in the gay world abusers are often protected and the victim punished. In fact a child who speaks out or complains runs the very real risk of suffering even more.

In all, there has been a great deal of sound and fury around these issues, sometimes signifying little; but please listen to your inner consciences, and the voice of logic, re these cases. There are other ways to grant dignity to gay couples. Mandatory national legalized same-sex marriage is not the way.

CONCLUSION

Amici respectfully ask the Court to uphold the judgment of the court of appeals; and humbly thank the Court for its time and consideration.

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